

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-23 are pending in this case. Claims 1 and 17-23 are amended only to correct matters of form. Thus, no new matter is added.

The outstanding Office Action rejected Claims 1-23 as unpatentable over Nishimura, et al. (U.S. Patent No. 7,386,623, herein “Nishimura”) in view of Takihiro, et al. (U.S. Patent No. 6,278,712, herein “Takihiro”).

When a combination of references is asserted as teaching every element of a claim, both the asserted modification, or how the references are combined, as well as the asserted motivation for the combination, or why one of ordinary skill in the art would combine the references, must be specified in the rejection. MPEP § 706.02(V) sets out the requirement for asserting the modification. As to the asserted motivation, the Court recently reiterated the requirement of MPEP § 2143.01 by stating that a “patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” KSR Int. Co. v. Teleflex Inc., 82 USPQ2d 1385, 1389 (2007). The Court stated the importance of identifying “a reason that would have prompted a person of ordinary skill in the art to combine the elements as the new invention does.” *Id.*

Further, under MPEP § 2143.01(V), the proposed modification cannot render the prior art unsatisfactory for its intended purpose, and, under MPEP § 2143.01(VI), the proposed modification cannot change the principle of operation of the prior art.

In this case, not only is a combination of Nishimura and Takihiro improper under MPEP § 2143.01, but a combination of the references also does not teach or suggest every element of the claimed invention.

The outstanding Office Action asserts Nishimura as teaching every element of Claim 1 directed to the communication terminal and proposes to modify the server of Nishimura with the server of Takihiro, which the outstanding Office Action asserts as teaching every element of Claim 1 directed to the server.

Nishimura describes live distribution of content from a user PC 106 to client PCs 107 through a streaming server 102. The cited portions of Nishimura state that the streaming server should be reserved and that client users should be informed of the reserved time for distribution through the streaming server. As detailed at column 5, lines 22-47, of Nishimura, the user PC 106 reserves, through the server reservation control center 101, a time zone during which the user PC 106 wants to carry out personal broadcasting through the streaming server 102. During the reserved time zone, the user PC 106 sends data to the streaming server 102 for live distribution to the client PCs 107.

However, as clearly described in Nishimura, the user PC 106 makes a reservation of a time zone but does not receive data during that reserved time. Instead, the user PC 106 sends data to the streaming server 102 during the reserved time. Thus, Nishimura does not teach or suggest the communication terminal including a “data receiving means for receiving the data transmitted by the server in accordance with the transmission request for transmission of the data transmitted by the data request transmitting means,” as recited by Claim 1. If, *arguendo*, the client PCs 107 of Nishimura are asserted to teach the communication terminal, as defined by Claim 1, because they receive data from the streaming server 102 at the reserved time, then Nishimura does not teach or suggest the communication terminal including a reservation selecting means as defined by Claim 1, because the client PCs 107 do not reserve the time zone in the streaming server 102.

With regard to Takihiro, Applicants respectfully submit to not understanding how the portions of Takihiro, quoted at page 6 of the outstanding Office Action, are asserted to teach the features of Claim 1 directed to the server. Thus, Takihiro is addressed in its entirety.

Takihiro describes a user terminal requesting a time for performing communication from a switching node. The controller 21 of the switching node of Takihiro distinguishes the service class of the requesting user terminals and allocates a communication time accordingly.

However, data is transferred from a transmission user terminal 4-1 to a destination user terminal 4-2 through the switching node in Takihiro, but the switching node itself does not store and transmit the data at a reserved time. Therefore, Takihiro does not teach or suggest a server including a data storing means or a data transmitting means as defined by Claim 1.

As discussed above, Nishimura and Takihiro do not teach or suggest features of Claim 1 that they are asserted to teach. Further, Nishimura does not cure the above-discussed deficiencies of Takihiro with regard to the server, as defined by Claim 1, and Takihiro does not cure the above-discussed deficiencies of Nishimura with regard to the communication terminal, as defined by Claim 1. Thus, even in combination, Nishimura and Takihiro do not teach or suggest every element of Claim 1.

Further, the combination itself is not proper under MPEP § 2143.01. The proposal to modify the server of Nishimura with that of Takihiro would result in replacing the streaming server of Nishimura with a switching node as in Takihiro. Not only would this modification change the principle of operation of Nishimura and render it unfit for its intended purpose, but it would also not cure the above-discussed deficiencies of the references with regard to Claim 1.

Because the combination of Nishimura and Takihiro does not teach or suggest every element of Claim 1, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) of Claim 1 and Claims 2-7, which depend therefrom, be withdrawn.

Claim 8 is directed to a communication terminal and recites the same features as those in Claim 1 directed to a communication terminal. However, the rejection of Claim 8 differs from the rejection of Claim 1 directed to the communication terminal. With regard to Claim 8, the outstanding Office Action concedes, at page 17, that Nishimura does not teach the reservation selecting means, as defined by Claim 8, “storing the start time,” but asserts, at page 18, that Nishimura can be modified with Takihiro to include storing a start time. With regard to Claim 1, the outstanding Office Action did not make the same concession or assertion.

Regardless of which combination is asserted in rejecting Claim 8, Applicants respectfully submit that the discussion with regard to Claim 1 has established that neither Nishimura nor Takihiro nor the combination of Nishimura and Takihiro teaches or suggests a communication terminal including the reservation candidate acquiring means and selecting means along with a data request transmitting means and receiving means.

Because Nishimura and Takihiro, taken in combination, do not teach or suggest every element of Claim 8, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) of Claim 8 and Claim 9, which depends therefrom, be withdrawn.

Claim 10 is directed to a server and recites the same features as those in Claim 1 directed to a server. However, the rejection of Claim 10 differs from the rejection of Claim 1 directed to the server. With regard to Claim 10, the outstanding Office Action asserts Nishimura as teaching every element of Claim 10 except a reservation registering means and data transmitting means, which it asserts Takihiro as teaching.

Regardless of which combination is asserted in rejecting Claim 10, Applicants respectfully submit that the discussion with regard to Claim 1 has established that neither Nishimura nor Takihiro nor the combination of Nishimura and Takihiro teaches or suggests at least the data transmitting means as defined by Claim 10.

Because Nishimura and Takihiro, taken in combination, do not teach or suggest every element of Claim 10, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) of Claim 10 and Claims 11-16, which depend therefrom, be withdrawn.

Claim 17, though differing in statutory class and scope from Claim 1, patentably defines over the combination of Nishimura and Takihiro for similar reasons as discussed above for Claim 1. Thus, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) of Claim 17 and Claims 18-23, which depend therefrom, be withdrawn.

In light of the above discussion, the rejection in the outstanding Office Action is believed to be traversed and the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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